

REMARKS

The Official Action dated May 5, 2005 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

In the Official Action, the Examiner objected to the abstract of the disclosure as directed to subject matter other than the claimed atmosphere modifying device. The abstract has been amended to describe the claimed atmosphere modifying device, whereby the objection has been overcome. Reconsideration is respectfully requested.

By the present Amendment, Claims 1 and 8 have been amended to clarify the invention. Support for the amendments may be found throughout the present specification, for example at pages 4, 8 and 9. Additionally, claim 11 is now presented in independent form. Claims 37-44 are added, support for which may be found throughout the present specification. It is believed that these claims do not involve any introduction of new matter, whereby entry is believed to be in order and is respectfully requested.

Claim 1 was rejected under 35 U.S.C. §102(b) as being unpatentable over the Carr et al U.S. Patent No. 6,132,781. The Examiner relied on Carr et al '781 as disclosing an atmosphere modifying device including an oxygen scavenger and a carbon dioxide emitter.

This rejection is traversed and reconsideration is respectfully requested. Applicants submit that present claim 1 defines an atmosphere modifying device which is patentably distinguishable over Carr et al '781. Anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference, *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999). The cited reference does not teach each and every limitation of claim 1.

More particularly, as defined by claim 1, the atmosphere modifying device comprises a carbon dioxide emitter and an oxygen scavenger. The carbon dioxide emitter is adapted to

emit carbon dioxide at a rate of about 1 cubic centimeter per hour or greater. The device is adapted for placement in a produce container to prolong produce storage life. To the contrary, Carr et al '781 discloses a food package including first compartment which contains an oxygen scavenger 28 and a second compartment, contained within the first compartment, which contains food such as raw meat and carbon dioxide, supplied from an emitter 40 (See Fig. 4). Applicants find no teaching by Carr et al '781 of an atmosphere modifying device that is adapted for placement in a produce container to prolong produce storage life. In fact, Carr et al '781 only discloses the use of multiple devices in a single food package. Therefore, the cited reference does not disclose each and every limitation of claim 1, and particularly does not disclose a single device as presently claimed, adapted for placement in a container. Rather, Carr et al employ several devices which are packaged with a food product. Therefore, Carr et al '781 does not support a rejection of claim 1 under 35 U.S.C. §102, whereby the rejection has been overcome. Reconsideration is respectfully requested.

Claims 2-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carr et al '781. The Examiner conceded that Carr et al '781 does not specifically disclose the CO₂ emitter as being carbonate or acid, or of the ratio or particle size of the claimed components. The Examiner asserted, however, that it would have been obvious to make the CO₂ emitter of a carbonate from the claimed group and an organic acid, in order to simply and cheaply create CO₂. The Examiner further asserted that it would have been obvious to mix carbonate and acid in the modified invention of Carr et al '781 in the claimed ratios in order to produce the most efficacious amount of CO₂. The Examiner also asserted that it would have been obvious to make the particle size of the CO₂ emitter of Carr et al '781 in the claimed dimensions in order to most effectively produce the desired CO₂.

This rejection is traversed and reconsideration is respectfully requested. That is, the deficiencies of Carr et al '781 discussed above apply equally as well in this rejection. Applicants

can find no teaching in Carr et al '781 of a single atmosphere modifying device as recited in claim 1 that is adapted for placement in a produce container to prolong produce storage life. To the contrary, the Carr et al '781 system comprises multiple devices which are packaged integrally with a food product. Carr et al provide no teaching or suggestion for modifying their system to provide an atmosphere modifying device as presently claimed. Further, while the Examiner asserts that all of the limitations of claims 2-8 would have been obvious, there is nothing in the evidence of record to support the Examiner's assertions. As such, Carr et al '781 does not render the presently claimed invention obvious. Accordingly, Carr et al '781 does not support a rejection under 35 U.S.C. §103, whereby the rejection has been overcome. Reconsideration is respectfully requested.

Claims 9, 10 and 13-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carr et al '781 in view of the Schvester et al U.S. Patent No. 5,203,138. The Examiner asserted that Carr et al '781 discloses an atmosphere modifying device, but conceded that Carr et al '781 does not disclose an ethylene scavenger. The Examiner, therefore, relied on Schvester et al '138 to teach an atmosphere modifying device using an ethylene scavenger to minimize the deleterious effects of ethylene on vegetable matter. The Examiner conceded that the combination of Carr et al '781 and Schvester et al '138 does not specifically disclose the claimed components of the ethylene scavenger. However, the Examiner asserted that it would have been obvious to make the ethylene scavenger of the combinations of Carr et al '781 and Schvester et al '138 from the claimed group, in order to simply and cheaply scavenge ethylene.

This rejection is traversed and reconsideration is respectfully requested. That is, the deficiencies of Carr et al '781 discussed above apply equally as well in this rejection and are not resolved by Schvester et al '138. Applicants can find no teaching in Carr et al '781 or Schvester et al '138 of an atmosphere modifying device that is adapted for placement in a produce container to prolong produce storage life. The isolated teaching by Schvester et al '138 of an ethylene

scavenger does not teach or suggest the claimed combination of elements or the significant modifications of Carr et al '781 necessary to arrive at the claimed atmosphere modifying device. As such, the cited references in combination do not provide the requisite suggestion of desirability for combining their teachings along the lines of the presently claimed invention. Accordingly, the cited combination of references does not support a rejection under 35 U.S.C. §103, whereby the rejection has been overcome. Reconsideration is respectfully requested.

Claims 11 and 12 were indicated as allowed. The Examiner conceded that the prior art could not alone or in combination anticipate or make obvious an atmosphere modifying device with a first compartment containing a CO₂ emitter, a second compartment containing an O₂ scavenger, and a third compartment containing an ethylene scavenger. The Examiner asserted that the most pertinent prior art, Carr et al '781 and Schvester et al '138, disclose the individual components of the CO₂ emitter, O₂ scavenger, and ethylene scavenger, but do not disclose putting them in separate compartments within an enclosure with gas permeable dividers.

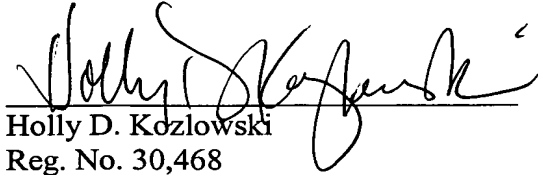
Although the present claim 11 does not specifically recite gas permeable dividers, Applicants agree that it is allowable as the prior art does not alone or in combination anticipate or make obvious an atmosphere modifying device with a first compartment containing a CO₂ emitter, a second compartment containing an O₂ scavenger, and a third compartment containing an ethylene scavenger, wherein the compartments comprise a gas permeable material.

Finally, Applicants request rejoinder of claims 16-36, which depend directly or indirectly from claim 1, upon indication of allowance of claim 1.

It is believed that the above represents a complete response to the objection and rejections under 35 U.S.C. §§ 102(b) and 103(a), and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Application No. 10/651,322
Amendment dated November 7, 2005
Reply to Office Action of May 5, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly D. Kozlowski", is written over a horizontal line.

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